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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

NICHOLAS JAMES MCGUFFIN, as an  
individual and as guardian *ad litem*, on behalf  
of S.M., a minor,

Plaintiffs,

Civil No. 6:20-cv-01163-MK  
(Lead Case)

v.

MARK DANNELS, PAT DOWNING,  
SUSAN HORMANN, MARY KRINGS,  
KRIS KARCHER, SHELLY MCINNES,  
RAYMOND MCNEELY, KIP OSWALD,  
MICHAEL REAVES, JOHN RIDDLE, SEAN  
SANBORN, ERIC SCHWENNINGER,  
RICHARD WALTER, CHRIS WEBLEY,  
ANTHONY WETMORE, KATHY WILCOX,  
CRAIG ZANNI, DAVID ZAVALA, JOEL D.  
SHAPIRO AS ADMINISTRATOR OF THE  
ESTATE OF DAVID E. HALL, VIDOCQ  
SOCIETY, CITY OF COQUILLE, CITY OF  
COOS BAY, and COOS COUNTY,

Defendants.

UPDATED JOINT STATUS REPORT  
AND DISCOVERY PLAN

VIDOCQ SOCIETY,  
Cross-Claimant,

v.

MARK DANNELS, PAT DOWNING,  
SUSAN HORMANN, MARY KRINGS,  
KRIS KARCHER, SHELLY MCINNES,  
RAYMOND MCNEELY, KIP OSWALD,  
MICHAEL REAVES, JOHN RIDDLE, SEAN  
SANBORN, ERIC SCHWENNINGER,  
RICHARD WALTER, CHRIS WEBLEY,  
ANTHONY WETMORE, KATHY WILCOX,  
CRAIG ZANNI, DAVID ZAVALA, JOEL D.  
SHAPIRO AS ADMINISTRATOR OF THE  
ESTATE OF DAVID E. HALL, VIDOCQ  
SOCIETY, CITY OF COQUILLE, CITY OF  
COOS BAY, and COOS COUNTY  
Cross-Defendants.

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NICHOLAS JAMES MCGUFFIN, as an  
individual and as guardian *ad litem*, on behalf  
of S.M., a minor,

Plaintiffs,

Civil Case No. 3:21-cv-01719-MK  
(Trailing Case)

v.

OREGON STATE POLICE,

Defendant.

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Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and the Court's Discovery and Pretrial Scheduling Order dated July 21, 2020 (Dkt. No. 6), counsel for Plaintiffs Nicholas McGuffin and S.M. ("Plaintiffs") and Defendants conferred on September 2, 2020, and the parties submitted a Joint Status Report and Discovery Plan on September 22, 2020 [Dkt. No. 40]. The parties submit this updated Joint Status Report and Discovery Plan in preparation for the court's Rule 16 conference on May 9, 2023.

#### **I. NATURE AND COMPLEXITY OF THE CASE:**

This is a civil rights lawsuit arising out of the alleged wrongful conviction of Plaintiff

Nicholas McGuffin.

## **II. DEADLINE FOR JOINING ADDITIONAL PARTIES AND PLEADING**

### **AMENDMENTS:**

Plaintiffs do not intend to join any additional parties. Plaintiffs propose that the parties follow FRCP 15 for amendments, if any, to the pleadings.

City/County Defendants propose: City/County Defendants will follow the Federal Rules of Civil Procedure for joining and/or adding additional parties, and for any amendments to the pleadings.

Defendant Walter: Acknowledges FRCP 15 controls the process for amendment and FRCP 20 for joinder, if any.

Defendant Vidocq Society: Acknowledges FRCP 15 controls the process for amendment and FRCP 20 joinder, if any.

State Defendants: State Defendants will follow the Federal Rules of Civil Procedure for joining and/or adding additional parties, and for any amendments to the pleadings.

### **III. PARTIES' CONSENT TO MAGISTRATE JUDGE:**

The parties do not consent to a Magistrate Judge.

The parties do not object to the assignment of the current Magistrate Judge Kasubhai in these matters.

### **IV. DISCOVERY PLAN:**

#### **A. Initial Disclosures**

The parties have served all initial disclosures pursuant to FRCP 26(a)(1).

#### **B. First Appearances**

All parties have appeared through counsel.

New counsel has substituted in for Defendant Vidocq Society and separately for Defendant Walter as of March 6, 2023. New counsel will need some additional time to review discovery already conducted in this case in order to meet litigation deadlines.

**C. Subjects, Timing, and Potential Phasing of Discovery**

The general subjects on which discovery will be needed include: Plaintiffs' claims for civil rights violations and violations of Oregon law and Defendants' affirmative defenses pleaded in their answers. The parties have exchanged extensive written discovery and conducted depositions of lay witnesses. The parties expect to continue depositions of lay and expert witnesses, and exchange additional written discovery.

Plaintiffs do not anticipate any special timing or phasing of discovery, and Plaintiffs object to any phasing of discovery.

City/County Defendants and Defendant Walter propose that it may be necessary to have special timing or phasing of discovery because of the number of Defendants involved, because of the period of time that has elapsed since the death of Leah Freeman, and because of the statute of limitations on certain claims.

Defendant Vidocq Society proposes phasing of expert discovery as described below.

The State Defendants propose phasing of expert discovery as described below.

**D. Electronically Stored Information ("ESI")**

**1. Storage and Format of ESI:**

Plaintiffs: Plaintiffs have ESI stored on cloud-based document storage systems, as well as external hard drives, CDs, and flash drives. The documents are stored in Word, PDF, .msg, and native format for raw data from forensic testing.

City/County Defendants: These Defendants have ESI stored on servers, external hard drives, CDs, and flash drives. The documents are stored in Word, PDF, .msg, and various video formats.

Defendant Walter: This Defendant has ESI stored on external hard drives, CD/DVDs, and flash drives. The documents are stored in Word, PDF, and .msg formats.

Defendant Vidocq Society: This Defendant has ESI stored on external hard drives, CD/DVDs, and flash drives. The documents are stored in Word, PDF, and .msg formats.

State Defendants: These Defendants have ESI stored on external hard drives, CDs/DVDs, and flash drives. The documents are stored in Word, PDF, msg, and various other formats.

2. ESI Liaison:

Plaintiffs: Counsel for Plaintiffs have the ability to facilitate preservation, retrieval, and production of ESI.

City/County Defendants and Defendant Walter: These Defendants have the ability to facilitate preservation, retrieval, and production of ESI.

Defendant Vidocq Society: This Defendant has the ability to facilitate preservation, retrieval, and production of ESI.

State Defendants: Assistant Attorney General Elleanor Chin will act as ESI liaison for State Defendants.

3. Preservation of ESI:

Plaintiffs: Plaintiffs are aware of the need to preserve ESI, and no ESI will be deleted, altered, or made inaccessible.

Defendants: Each named Defendant is aware of the need to preserve ESI, and no ESI will be deleted, altered, or made inaccessible.

4. Scope of Discovery of ESI:

Plaintiffs: Plaintiffs anticipate seeking ESI to include emails, raw data from forensic testing, and electronically stored files.

Defendants: Defendants anticipate seeking ESI to include emails, raw data from forensic testing, and electronically stored files.

5. Requesting ESI: The parties will work together to develop descriptions and search terms to find and produce ESI.

6. Production Format of ESI: The parties will work together to identify the format of ESI based on the type of ESI requested and available for production.

7. Preservation of Privilege: The parties agree that they need not identify on privilege logs any privileged or work-product electronically stored information that came into being after Plaintiffs' tort claim notice dated May 8, 2020, but this does not prevent any party from seeking such information should there be an issue as to what is privileged or what is work product. The parties also agree that they will address the claw-back of inadvertently produced privileged documents in a form of proposed stipulated protective order to be submitted for the Court's approval in the near future.

#### **E. Proposed Limitations on Discovery**

The parties propose the following:

1. Depositions: The parties anticipate the need for more than 10 depositions, and, if the parties cannot agree as to the number of depositions that exceed 10 depositions, the parties agree to submit the issue to this Court.
  - a. Plaintiffs propose that the parties follow FRCP 30 and LR 30 for the use of depositions.
  - b. City/County Defendants, State Defendants, Defendant Walter, Defendant Vidocq Society propose that each deposition will not exceed eight hours in length, unless otherwise agreed by all of the parties or unless otherwise ordered by this Court.
2. The Use of Interrogatories:
  - a. Plaintiffs propose that the parties follow FRCP 33 and LR 33 for the use of interrogatories.
  - b. City/County Defendants, State Defendants, and Defendant Walter propose that the maximum number of interrogatories allowed by each party is 30, and all answers and objections to interrogatories are due 30 days after they are served, unless permission is obtained to extend the answers and objections, or unless otherwise ordered by the Court. Defendants further

propose that the parties reserve their rights to request leave for additional interrogatories after conferring and for good cause shown.

- c. Defendant Vidocq Society proposes that the parties follow FRCP 33 and LR 33 for the use of interrogatories.

**3. The Use of Requests for Admission**

- a. Plaintiffs propose that the parties follow FRCP 36 and LR 36 for the use of requests for admission.
- b. City/County Defendants and Defendant Walter propose that the maximum number of requests for admission allowed by each party is 30, and all answers and objections to requests for admission are due 30 days after they are served, unless permission is obtained to extend the answers and objections, or unless otherwise ordered by the Court. Defendants further propose that the parties reserve their rights to request leave for additional requests for admission after conferring and for good cause shown.
- c. Defendant Vidocq Society proposes that the parties follow FRCP 36 and LR 36 for the use of requests for admission.

- 4. The parties further anticipate that document productions will be extensive, and the parties agree that each party will Bates number its documents for production using a prefix followed by a six-digit number to indicate the source of the documents (e.g., CPD\_000001 for Coquille Police Department).

**F. Need for Discovery Related Orders**

The parties believe that a protective order will be required to limit the disclosure of confidential or privileged information. The parties will work together to prepare a stipulated proposed Protective Order pursuant to FRCP 26(c) and LR 26-4 for the Court's consideration.

**G. Proposed Modifications to Court's Scheduling Order**

- 1. Plaintiffs propose the following deadlines and modifications to the Court's

Scheduling Order dated July 21, 2020:

- a. Deadline to File Discovery Motions: June 26, 2023
- b. Deadline to Complete Discovery: August 7, 2023
- c. Deadline for Expert Disclosures: August 7, 2023
- d. Deadline to File Dispositive Motions: August 21, 2023
- e. Hearing on Dispositive Motions: September 29, 2023
- e. Deadline to File Pretrial Order: October 9, 2023
- f. Deadline to File Pretrial Motions: October 23, 2023
- g. Ready for Trial: November 27, 2023

**2.** City/County Defendants, Defendant Walter, and Defendant Vidocq Society propose the following deadlines and modifications to the Court's Scheduling Order dated July 21, 2020:

- a.** Deadline to File Discovery Motions: November 30, 2023
- b.** Deadline to Complete Discovery: December 15, 2023
- c.** Deadline to File Dispositive Motions: March 29, 2024
- d.** As to each expert witness, the parties will comply with the requirements of FRCP 26(a)(2) by February 29, 2024, if no dispositive motions are filed; otherwise, 30 days after the decision on dispositive motions.
- e.** As to each expert witness that will be used for rebuttal to the other parties' expert, the parties will comply with the requirements of FRCP 26(a)(2) by March 29, 2024.
- f.** Deadline to File Pretrial Order: April 30, 2024, if no dispositive motions have been filed; otherwise 30 days after the decision on the dispositive motions.
- g.** Ready for Trial: Summer of 2024. The Municipal Defendants, Defendant

Walter, and Defendant Vidocq Society acknowledge that the Court will set



a Trial Management Order providing dates that trial documents are due.

3. The State Defendants propose the following deadlines and modifications to the Court's Scheduling Order dated July 21, 2020:
  - a. Deadline for Plaintiffs to designate experts and provide reports per FRCP 26(a)(2)(B): February 29, 2024
  - b. Deadline for depositions of Plaintiffs' expert witnesses: March 29, 2024
  - c. Deadline for Defendants to designate experts and provide reports per FRCP 26(a)(2)(B): April 29, 2024
  - d. Deadline for depositions of Defendants' expert witnesses: May 29, 2024
  - e. Deadline to file discovery motions: June 15, 2024
  - f. Deadline to complete discovery: August 15, 2024
  - g. Deadline for dispositive motions: September 15, 2024
  - h. Deadline to file pre-trial order: October 15, 2024, if no dispositive motions have been filed; otherwise, 30 days after final resolution of dispositive motions
  - i. Deadline to file pre-trial motions: 14 days following deadline to file pre-trial order
  - j. Ready for trial: Early 2025. The State Defendants acknowledge that the Court will set a Trial Management Order providing dates that trial documents are due.

#### **H. Alternative Dispute Resolution**

Plaintiffs expect to confer about ADR after the completion of discovery and before the deadline to file dispositive motions.

City/County Defendants and Defendant Walter expect to confer about ADR before the LR 16-4 deadline, but believe that the case will not benefit from ADR before discovery has been completed.

Defendant Vidocq Society believes the case will not benefit from ADR until additional discovery has been completed and therefore requests that the deadline for the joint ADR report be November 1, 2023.

The State Defendants expect to confer about ADR before the deadline to file dispositive motions but believe additional discovery needs to be completed before ADR.

DATED: May 8, 2023

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<p>LAW OFFICE OF ROBERT FRANZ JR.</p> <p>By <u>/s/Robert E. Franz</u>  Robert E. Franz Jr., OSB #730915  E-Mail: rfranz@franzlaw.comcastbiz.net</p> <p>Attorneys for Defendants Mark Dannels, Pat Downing, Kris Karcher, Raymond McNeely, Kip Oswald, Michael Reaves, Sean Sanborn, Eric Schwenninger, Chris Webley, Anthony Wetmore, Craig Zanni, David Zavala, City of Coquille, City of Coos Bay, and Coos County</p>	<p>LUVAAS COBB</p> <p>By <u>/s/Eric S. DeFreest</u>  Eric S. DeFreest, OSB #920475  E-Mail: edefreest@luvaascobb.com</p> <p>Attorneys for Defendant Richard Walter</p>
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2023, the foregoing UPDATED JOINT STATUS REPORT AND DISCOVERY PLAN was served on the following parties at the following address by sending to them a true copy thereof via the method indicated below:

Robert E. Franz, Jr. Sarah R. Henderson Law Office of Robert E. Franz, Jr. PO Box 62 Springfield, OR 97477 rfranz@franzlaw.comcastbiz.net shenderson@franzlaw.comcastbiz.net <i>Attorneys for Defendants  City of Coquille, City of Coos Bay, Coos  County, Craig Zanni, Chris Webley, Eric  Schwenninger, Sean Sanborn, Ray McNeely,  Kris Karcher, Pat Downing, Mark Dannels,  Kip Oswald, Michael Reaves, David Zavala,  Anthony Wetmore, Shelly McInnes</i>	Jesse B. Davis Todd Marshall Oregon Department of Justice 100 SW Market Street Portland, OR 97201 todd.marshall@doj.state.or.us jesse.b.davis@doj.state.or.us <i>Attorneys for Defendants Oregon State  Police, John Riddle, Susan Hormann,  Mary Krings, Kathy Wilcox</i>
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by electronic means through the Court's ECF System on the date set forth above.

MALONEY LAUERSDORF REINER PC

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